IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 208 of 2005

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SABBIRALI SAIYADALI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 208 of 2005

MR BALRAM D JAIN for Petitioner No. 1

Mr.K.P.Raval, A.P.P. Respondent No. 1

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 03/05/2005

ORAL JUDGEMENT

1. In this Revision Application filed under Section 397 read with Section 401 of the Code of Criminal Procedure the applicant Sabbirali Saiyadali seeks modification of the condition to furnish solvent bail bond of Rs.7,50,000/-and personal bond for the like amount imposed vide order dated 29-3-2005 by the learned

the learned Judicial Magistrate, First Class Bardoli in Criminal Misc.Application no.140/05 preferred by the applicant for interim custody of the vehicle in question.

2. Short factual background leading to the filing of the present Revision is that on 10th March, 2005 the truck bearing no. MH 04 AL 3775 driven by the applicant who was a driver and also doing the business of transportation, came to be seized by the Bardoli Prohibition Staff inter alia alleging that the applicant was found to be transporting liquor worth Rs.7200/-and the vehicle was retained in police custody. A complaint in that regard was also registered by the Prohibition Squad bearing no.CR No.533/2005. Thereupon, the petitioner preferred an application being Criminal Misc.Application no.140/2005 before the learned Judicial Magistrate, First Class, Bardoli, who by his order dated 29-3-2005 while imposing several conditions also imposed the condition as referred to in para 1 of this judgment, giving rise to the present Criminal Revision Application.

3. Learned Counsel for the petitioner has contended that the condition of Rs.7,50,000/-solvent bail bond and personal bond of the like amount imposed by the learned Magistrate is too harsh considering the fact that the vehicle in question is a second hand vehicle and that the applicant being a driver cannot afford to abide by such condition. Under the circumstances, it is prayed that a lenient view be taken and a suitable condition be imposed.

4. In support of his above contention, learned Counsel for the applicant has also drawn my attention to the following two decisions: (1) Sunderbhai Ambalal Desai v. State of Gujarat reported in AIR 2003 SC 638 and (2) RAJENDRA PRASAD v. STATE OF BIHAR AND ANR. reported in (2001) 10 Supreme Court Cases 88.

5. The learned A.P.P. has supported the judgment and order of the learned Judicial Magistrate.

6. I have carefully perused the judgment of the trial Court as also the material on record. Having regard to the ratio laid down by Apex Court in the aforesaid two decisions as also judicial principles contained in Sec.451 of the Criminal Procedure Code, I am of the considered opinion that the present Criminal Revision Application deserves to be partly allowed.

In the result, the Criminal Revision Application

is partly allowed. The Muddamal truck no.MH 04 AL 3775 be released to the applicant on his furnishing solvent bail bond to the tune of Rs.2,50,000/- and personal bond of the like amount instead of the condition to furnish solvent bail bond of Rs.7,50,000/- as ordered by the learned Magistrate vide his order dated 29-3-2005. All the other condition imposed by the learned Magistrate in the said order shall remain intact. Rule is made absolute accordingly.

(M.D.Shah,J.,)

stanley-mds.